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OFFICE OF PETITIONS

In re Application of Humberstone et al. :  
Application No. 10/581,991 : Decision on Petition  
Filing Date: May 8, 2007 :  
Attorney Docket No. 025217-0147 :

This is a decision on the petition under 37 CFR 1.137(b), filed January 27, 2010, to revive the above-identified application.

The petition is **granted**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed June 25, 2008, which set a shortened statutory period for reply of three (3) months. An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application became abandoned on September 26, 2008. A Notice of Abandonment was mailed January 9, 2009.

The instant petition requests revival of the application.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed,
- (2) The petition fee,
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) A terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

As to item (1), the petition is accompanied by an amendment in responding to the June 25, 2008 Office action.

As to item (2), Petitioner has submitted \$1,620 petition fee.

As to item (3), Petitioner has stated the entire delay in filing the required reply, from the due date of the reply until the filing of the petition, was unintentional.

The application has been abandoned for an extended period of time. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. *See Changes to Patent Practice and Procedure*, 62 Fed. Reg. at 53160 and 53178; 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office).

As to item (4), a terminal disclaimer is not required in the instant case.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

Technology Center Art Unit 3767 will be informed of the instant decision and the application, including the amendment filed January 27, 2010, will be further examined in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



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